

Understanding Humanitarian Assistance

The facilitation of humanitarian assistance is one of the most basic rules of modern international humanitarian law and is applicable to all types of conflict.

Q) What does international law say about humanitarian assistance in international armed conflict?

- *Customary International Law (applies regardless of whether states have ratified the treaty)*

Rule 55 of the ICRC Customary International Law Study sets out the key legal notions relating to humanitarian assistance:

“The parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control.”

- *Treaty provisions*

Article 23 of the Fourth Geneva Convention requires states to “allow the free passage of all consignments of medical and hospital stores” intended only for civilians and “the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases”.

Although Article 23 references civilians of “another High Contracting Party”, it should be read in conjunction with Rule 55 of the ICRC Customary International Law Study (outlined above) and interpreted in the broader sense, with the protections outlined afforded to all protected persons in situations of armed conflict.

Additional Protocol 1 broadens this obligation to cover “rapid and unimpeded passage of all relief consignments, equipment and personnel”. This broadening is **generally accepted**, including by states not, or not at the time, party to Additional Protocol I.

This obligation also applies to third states and states through which the aid much transit.

- *Military Manuals*

Many military manuals contain the obligation to allow and facilitate access of humanitarian relief to civilians in need.¹

Q) What does international law say about humanitarian assistance in situations of occupation?

In general situations of armed conflict, warring parties should facilitate the delivery of aid, as outlined above. However, in situations of occupation, the Occupying Power, in addition to the general obligation to allow and facilitate humanitarian aid, has the legal obligation to provide for the needs of the local population. This principle is outlined in Article 43 of the 1907 Hague Regulations, which constitutes customary international law.

Israel, as the Occupying Power, must allow for the delivery of humanitarian aid. It is entitled to exert certain measures of control on humanitarian operations (Art. 23 GCIV), but humanitarian assistance must not be refused on arbitrary or unlawful grounds (Customary International Law Rule 55)

Q) Do donors and humanitarian actors have to *inform* or gain the consent of Israel for humanitarian activities?

Firstly, it is important to highlight two key points:

¹ For example, the US Field Manual (1956) states that in situations of occupation, if the occupied territory is in need of supplies, “all Contracting Parties shall permit the free passage of [relief] consignments and shall guarantee their protection.”
http://www.icrc.org/customary-ihl/eng/docs/v2_cou_us_rule32

- Israel is the primary duty bearer for the provision of humanitarian aid in the occupied Palestinian territory;
- When it is unable or unwilling to do so, Israel must facilitate the delivery of aid by third actors.

When discussing third party delivery, warring parties (including Occupying Powers) do have limited control rights. These control rights are in place in order to ensure that the delivery is not at risk during hostilities; to ensure the delivery is effective; and to ensure that it will not be used by the adversary. Hence, control rights include discussing the timing of delivery and routes through areas where there are active hostilities.

When there are no active hostilities, the need for extensive control decreases significantly while still allowing an Occupying Power to address specific security concerns. As such, informing the Occupying Power of delivery is sufficient.

It is not purely a legal question.

- International law does suggest some level of notification between the aid provider and the Occupying Power in order to ensure there are no security concerns. The question is what form should such notification take? What if the aid delivery has already been set out in the Common Appeals Process? In this context, the Occupying Power will be more than aware of the humanitarian response mechanism to demolitions, for example.
- In the context of the oPt, the key challenge is that the humanitarian need has been created by an Occupying Power that appears to be actively pushing for the transfer of residents of strategic locations in Area C. The question, then, is to what extent can coordination with such a planning regime have any pragmatic or positive results?
- One problem with notification is that the Occupying Power may instruct that the humanitarian aid be delivered to an alternative location, such as Area B. However, this would put an aid provider in a difficult position, as they should not risk facilitating the forcible transfer of a demolished village's population. Furthermore, to deliver aid to an

alternative location may undermine the basic principles of the do no harm approach, which underscores humanitarian work globally.

Q) What about Egypt's obligation towards Gaza?

Egypt is a State party to Additional Protocol 1 to the Fourth Geneva Convention and as such there can be no question of its obligation as a third state to facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel into Gaza.

Humanitarian Assistance and IHL in the oPt

The increase in demolitions and displacement and the subsequent obstruction of humanitarian assistance in the oPt has led to concerns with regard to serious violations of international humanitarian law. The two gravest concerns are those of wanton destruction of property and forcible transfer, both grave breaches of the Geneva Conventions. In addition, a central concern is the impediment faced by humanitarian actors delivering aid.

It is always important to reiterate that:

- Israel is fully bound by the Geneva Conventions (confirmed by the International Court of Justice, as well as the UN Security Council)
- Domestic law (including Israeli Military Orders, Jordanian, and Ottoman) can under no circumstances circumvent international law.

Destruction of property

The destruction of private property, which can only be justified when absolutely necessary for military operations, is a clear violation of IHL. In addition to this very clear protection, humanitarian objects are considered to have special protection. It should be noted that in several cases before the European Court of Human Rights, certain acts of violence including the destruction of homes have been classified as inhumane treatment.

Forced Transfer

Article 49 of the Fourth Geneva Convention states that individual or mass forcible transfer is prohibited regardless of the motive. It should be noted that:

'forcibly' is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment.

Irrelevance of “Legal” residency

The prohibition on forced transfer and destruction of property are for the benefit of the entire protected population, i.e. of each inhabitant. They are in no way tied to any technicality like permanent residency. Whether the individual was a permanent resident of the area where his or her property happened to be located is irrelevant.

Closed Military Zone

One argument often put forward by the Israeli military is that a community is located in a closed military zone and the military need to conduct trainings; hence an evacuation is needed to protect the local communities. The good faith nature of this argument is undermined by the failure to evacuate any individuals from the Israeli settlements, and in addition an Occupying Power's right to evacuate communities can only be done during hostilities. Israel should conduct its training exercises either away from protected communities, or within their own territorial boundaries.

Grave Breaches

While all violations of IHL remain of serious concern, the drafters of the Geneva Conventions did envisage a hierarchy, setting out a select list of breaches which are deemed to be more serious; what we refer to as grave breaches. All grave breaches have been codified as war crimes and in this case we are mainly referring to forced transfer of protected population, transfer of

populations into occupied territory (settlements) and the extensive and wanton destruction of property. The prohibition on war crimes should be included in national legislation and dealt with primarily by domestic courts.

A warring party cannot justify the commission of such violations by referring to them as “administrative” manner, or one that was ordered by the Court. Neither claim has any bearing whatsoever on the commission of war crimes. The occurrence of grave breaches remains a factual assessment and a matter of law.

3rd State Responsibility

While the Occupying Power continues to engage in behavior that is in opposition to the international legal framework, it is important that third states respect their international legal obligations to ensure respect of IHL and hence should consider a range of measures that they feel would pressure Israel to comply with its legal obligations. In this light European Members are encouraged to review the [“European Union Guidelines on promoting compliance with international humanitarian law”](#). Monitoring and observing the delivery of aid as well as regularly monitoring the status of humanitarian projects are important practical tools that should be used to ensure Israel’s compliance with its IHL obligations.

In addition all third states have the obligation to search for and prosecute those who are ordering, assisting or undertaking grave breaches of the Geneva Conventions.

Q & A

What does international law say about humanitarian assistance?

All parties to a conflict, be it of an international or non-international nature, have the obligation to allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need. The assistance must be impartial in character and provided on the basis of need alone (Rule 55 ICRC Customary International Law Study).

It should be reiterated that uniquely in situations of occupation the Occupying Power itself has the legal obligation to provide for the basic needs of the local community (Article 55 GCIV), and where it is unable or unwilling to do so must *facilitate effectively* the work of humanitarian relief schemes (Article 59).

Israel have themselves in numerous circumstances accepted that they are an Occupying Power, however they dispute the application of the Geneva Conventions. This is disputed by the international community (SC, UNGA, ICJ), even if such a position was accepted it is important to note that the duty to facilitate the delivery of humanitarian aid is one which is a central principle of customary international law and as such applicable to all States. IHL was built and inspired upon the basic notion of providing relief to those in need, and hence if the customary nature of this rule were to be disputed, IHL as a protective body of law would be almost superfluous.

The GOI officially and publically declares that it applies customary international law to the OPT.

The United Nations General Assembly and Security Council have consistently underlined the importance of safe and unhindered access of humanitarian personnel to civilians in armed conflict, including refugees and internally displaced persons, and the protection of humanitarian assistance to them.

Can humanitarian actors not just provide the aid to another location?

With Israel confiscating and preventing the delivery of aid, humanitarian actors are unable to adhere to their own mandates. Some have suggested that aid should be delivered to nearby locations where the risk of destruction and/or confiscation would be minimized. However such steps would endanger the basic principle of *do not harm*, and such a delivery could facilitate the displacement of the community from their homes and hence do more harm. Such actors may also be vulnerable to the accusation that they have facilitated the forcible transfer of a protected community.

Israeli claims that the Geneva Conventions do not apply and hence are not bound by such obligations. If this is true, what obligations, if any, do they have?

Even if the Geneva Conventions are not accepted as applicable (a standpoint systemically challenged by international community, SC, UNGA and International Court of Justice) the rule on the facilitation of humanitarian aid is a central concept under IHL. As stated above all parties to a conflict, be it in an international or non-international armed conflict, have the obligation to allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need.

Israeli maintains that destruction of property and confiscation of aid is done legally and often as part of a measure to enforce an Israeli Court decision. Can this be reconciled with international law?

Many warring parties in situations of conflict fail to live up to their obligations under IHL and the Geneva Conventions. However, in the case of the oPt, Israel is unique in claiming that its actions are in fact legal and supported by a democratic legal institution. Rulings by the Israeli High Court that allow for the destruction of private property are not compatible with international law, unless that destruction is absolutely necessary during the course of military operations and hostilities. For more information see Diakonia's [legal brief](#) on destruction of property and IHL.

The assessment of the High Court in cases of destruction of private property in no way ensures the basic protections afforded by IHL in times of occupation, both under the Geneva Conventions and Hague Regulations. Instead, such steps appear to legalise destruction of property and forcible transfer, both which could amount to grave breaches of international law.

It is important that international law protects individual's rights, regardless of the ways in which the Occupying Power will look to define their status. An Occupying Power's rights cannot under any circumstances be equated with those of sovereign state. To treat an occupied territory as sovereign territory would clearly risk violating the UN Charter which prohibits the acquisition of territory by force.

Unfortunately, Court decisions allowing for the destruction of property expand the powers of the occupier beyond the remit of international law, to the point that the distinction between sovereign and occupier has been blurred. On the one hand, the Court extends the privileges outside of what IHL provides for (for example, with regard to [the use of natural resources](#)), but on the other, side steps the most basic obligations of the Occupying Power to administer the occupied territory for the benefit of the occupied population. This is particularly notable in relation to spatial planning and related policies and practices of territorial administration.

-Ends-